

## UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Western Division

FILED

NOV 16 2023

PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
BY mub DEP CLKAdomavicius, Jurgis

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

International Business Machines Corporation

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No.

5:23-CV-00656-D

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☐ Yes ☒ No

## COMPLAINT FOR EMPLOYMENT DISCRIMINATION

## I. The Parties to This Complaint

## A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Adomavicius, Jurgis</u>
Street Address	<u>500 Mountain Sunset Lane</u>
City and County	<u>Cary/Catham</u>
State and Zip Code	<u>North Carolina 27519</u>
Telephone Number	<u>919-201-0475</u>
E-mail Address	<u>gadamavic@gmail.com</u>

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

## Defendant No. 1

Name	International Business Machines Corporation
Job or Title ( <i>if known</i> )	
Street Address	160 Mine Lake Court Suite 200
City and County	Raleigh/Wake
State and Zip Code	North Carolina 26615
Telephone Number	
E-mail Address ( <i>if known</i> )	

## Defendant No. 2

Name	
Job or Title ( <i>if known</i> )	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address ( <i>if known</i> )	

## Defendant No. 3

Name	
Job or Title ( <i>if known</i> )	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address ( <i>if known</i> )	

## Defendant No. 4

Name	
Job or Title ( <i>if known</i> )	
Street Address	
City and County	
State and Zip Code	

Telephone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

**C. Place of Employment**

The address at which I sought employment or was employed by the defendant(s) is

Name	IBM
Street Address	Research Triangle Park
City and County	RTP/Wake
State and Zip Code	North Carolina 27709
Telephone Number	

**II. Basis for Jurisdiction**

This action is brought for discrimination in employment pursuant to (check all that apply):

- ☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

*(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)*

- ☒ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

*(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)*

- ☐ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

*(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)*

- ☒ Other federal law (specify the federal law):  
Employment Retirement Income Security Act of 1974 (ERISA) Sections 510 and 502

- ☐ Relevant state law (specify, if known):

- ☐ Relevant city or county law (specify, if known):

**III. Statement of Claim**

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☐ Termination of my employment.
- ☐ Failure to promote me.
- ☐ Failure to accommodate my disability.
- ☐ Unequal terms and conditions of my employment.
- ☐ Retaliation.
- ☒ Other acts *(specify)*: inhibiting access to Healthcare Reimbursement funds

*(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)*

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

08/28/2023

C. I believe that defendant(s) *(check one)*:

- ☒ is/are still committing these acts against me.
- ☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☐ race \_\_\_\_\_
- ☐ color \_\_\_\_\_
- ☐ gender/sex \_\_\_\_\_
- ☐ religion \_\_\_\_\_
- ☐ national origin \_\_\_\_\_
- ☒ age *(year of birth)* 1953 *(only when asserting a claim of age discrimination.)*
- ☐ disability or perceived disability *(specify disability)* \_\_\_\_\_

E. The facts of my case are as follows. Attach additional pages if needed.

## Introduction/Overview

1. Plaintiff had a Future Health Account (FHA) with IBM since the change in pension benefit from DB (Defined Benefit) to DC (Defined Contribution) in the 1990s. This fund was contributed to for some years by IBM and more recently has only incremented from interest accumulations. Upon plaintiff's retirement on October 31, 2020 the FHA converted to a Health Reimbursement Account (HRA) [EXHIBIT 1]
2. The process to access HRA funds is outlined in the document About Your Benefits Post-Employment SUMMARY PLAN DESCRIPTION (SPD) [EXHIBIT 2 SPD version Jan 2020] [EXHIBIT 3 SPD version Jan 2023]. Plaintiff properly fulfilled the requirements in SPD ver 2020 and successfully accessed these funds in 2021 and 2022, as administered by Viabenefits.
3. IBM began to communicate changes in its retirement healthcare benefits in Q4 of 2022. The management of HRA was to terminate at Viabenefits 12/31/2022 and then move to Optum Bank and United Healthcare. This was not a clean conversion process and the funds were not even visible on the Optum website until March or April of 2023. At that point plaintiff tried to access his funds and was told the account was "dormant" and he needed to enroll in an IBM sponsored plan first to unlock the funds. There was no communication of an updated SPD until July of 2023 [EXHIBIT 4].
4. In the publication of these SPDs, IBM has published, and documented, its action of discrimination. IBM has arbitrarily segmented the retiree Medicare-eligible population into 2 groups, with further sub-groups: (1) Plan purchase required, and (2) Special Considerations with no plan purchase required. This is summarized in [EXHIBIT 4]. Note that discrimination against Medicaid enrolled retirees was corrected in SPD version Jan 2023.

## Plaintiff Attempts to Restore Access to HRA

5. Plaintiff sent first letter to Plan Administrator (Fidelity) requesting an exception [EXHIBIT 6] on April 18, 2023. The request was denied in a letter dated June 1, 2023 [EXHIBIT 7]. The response is confusing and does not show a sincere effort as it quoted from the terms of SPD Ver 2020 which Plaintiff had met ("individual medical or prescription drug insurance coverage")
6. Plaintiff sent a second appeal letter on July 12, 2023 [EXHIBIT 8] which pointed out the confusion (error?) from the first response, and also offered two easy solutions. The appeal was denied August 28, 2023 [EXHIBIT 9]. In this response was the instruction of right to civil action under 502 of ERISA.
7. After the appeal denial, Plaintiff engaged in discussions with EBSA (Employee Benefits Security Administration) and EEOC (Equal Employment Opportunity Commission), with supervisors at each of those. It was recommended Plaintiff file a charge with the EEOC.
8. In September 2023 a charge of discrimination was filed with the EEOC charge #433-2023-03546 [EXHIBIT 10]. The response was issued Sept 10, 2023 [EXHIBIT 11]. The Right to Sue is using paragraphs 510 and 502 of ERISA [EXHIBIT 12]

## SUMMARY

9. Once an individual reaches Medicare eligible age, selection of healthcare options and insurance plans is a very serious decision. Plaintiff spent several years investigating and arriving at his choice of healthcare coverage, and even enrolled his wife, and then himself, in Medicare, and not the IBM plan, while still employed. [EXHIBIT 13] is a sample chart from the medicare.gov web site showing a



glimpse of the complexity and options. IBM should not be forcing a choice on a retiree. These choices are significant personal decisions that only the individual retiree can properly assess. The impact of these proposed changes were reported in the press [EXHIBIT 14], [EXHIBIT 15]. IBM's SPD causes specific identifiable select groups of Medicare-age retirees to suffer financial loss (access to HRA and higher overall healthcare costs), emotional and mental stress, and undue duress.

10. Plaintiff believes that IBM would have a great financial advantage if retirees abandoned their HRA accounts as they do not transfer on death. There is obvious intention on IBM's part as the acts of discrimination are blatantly published in the SPDs. A petition on change.org captured in excess of 3000 signatures [EXHIBIT 16]. Successful deterrence by IBM of its retirees from their HRAs would save IBM tens of millions of dollars, if not more

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*(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)*

#### IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

09/06/2023 EEOC Charge # 433-2023-03546

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- B. The Equal Employment Opportunity Commission *(check one)*:

☐

has not issued a Notice of Right to Sue letter.

☒

issued a Notice of Right to Sue letter, which I received on *(date)* 9/10/2023.

*(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)*

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

☒

60 days or more have elapsed.

☐

less than 60 days have elapsed.

#### V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Restoration of access to Healthcare Reimbursement funds  
Reimbursement for out-of-pocket costs pursuing this action

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**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

11/16/2023

Signature of Plaintiff

Printed Name of Plaintiff

Jurgis Adamavicius

11/16/2023

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney \_\_\_\_\_

Printed Name of Attorney \_\_\_\_\_

Bar Number \_\_\_\_\_

Name of Law Firm \_\_\_\_\_

Street Address \_\_\_\_\_

State and Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_